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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/514,352	02/28/2000	Gunji Tsukuda	NIT-84-02	8320

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EXAMINER

PATEL, JAGDISH

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 01/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/514,352

Applicant(s)

TSUKUDA, GUNJI

Examiner

JAGDISH N PATEL

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4 and 22-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1,2,4 and 22-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

1. This communication is in response to amendment filed 10/16/02.

Response to Amendment

2. The specification and claims 1, 2 and 4 have been amended and new claims 22-51 have been added per request.

3. Objection to claim 4 and rejection of claims 2 and 4 under 35 USC 112(second) have been withdrawn.

4. Claims 1,2,4 and 22-51 are pending and have been examined.

Response to Arguments

5. Not applicable since there are no remarks/arguments regarding the claim rejections provided by the applicant.

Claim Objections

6. Claim 4 is objected to because of the following informalities: Claim Objections:

Claim 4 is objected to due to the following informalities:
Line 17 "date" should read "data".

Furthermore Claim 4 recites "an agent server" in lines 6. However, other than it being connected to a client and the distribution server, no functionality of the agent server is recited.

Appropriate correction is required.

Specification

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to

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which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to support the subject matter set forth in the claims 22-51. The specification, as originally filed does not provide support for the invention as now claimed.

The test to be applied under the written description portion of 35 U.S.C. § 112, first paragraph, is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of later claimed subject matter. Vas-Cat, Inc. v. Mahurkar, 935 F. 2d 1555, 1565, 19 USPQ2d 111, 1118 (Fed. Cir. 1991), reh'rg denied (Fed. Cir. July 8, 1991) and reh'rg, en banc, denied (Fed. Cir. July 29, 1991).

Claims 22-51 include the limitation "an agent server to be used when commission by an agent is selected on delivery of goods" (claims 22-47) and "an agent server" as comprising:

Client apparatus and a distribution server. (claims 48-51)

However, the specification does not provide an enabling disclosure to support the claimed limitations "an agent server" as recited above in both instances.

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Claim Rejections - 35 USC § 112

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claims 22-51 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In particular, claims 30-32 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

Claim 22-47 recite limitation "an agent server to be used when commission by an agent is selected on delivery of goods" There is no support for this limitation in the disclosure.

Dependent claims also inherit this weakness.

Claims 48-51 recite "an agent server" as comprising:

Client apparatus and a distribution server. However, since the client apparatus and the distribution server are distinct

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elements of the delivery managing system (Fig. 1), this recitation is inconsistent with the disclosure.

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 22-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

13. Claims 22-51 are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

The examiner provides the following examples in support of the above stated deficiencies:

Claim 22 recites at L 9-11 "means for receiving a distribution condition, including an agent to be used on the delivery of said goods, which is transferred from said client apparatus"

Should read: "means for receiving information about distribution condition including identity of an agent to be used, said information transferred from said client apparatus"

Claim 22 recites at L 18-22 reads " means for..., upon basis of a comparison result between said information transmitted .. and "said information received by inputting in the client, when said goods is delivered to said agent".

Which should read:

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"means for determining whether or not to send the goods to the client based upon a result of a comparison between said information transmitted .. and said information inputted in the client apparatus, said determining step performed when said goods is delivered to said agent."

Note that this deficiency is only exemplary of claims 22-51. The applicant is required to review all claims and correct all deficiencies.

Dependent claims 23-30 inherit weakness of parent claim 22.

Claims 31-51 are analyzed in analogous manner as claims 22-51.

14. Claims 22-40 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP Section 2172.01. The omitted structural cooperative relationships are as follows:

15. claim 22 recites limitation "an agent server", "agent", "distribution server" and "client" which do not relate structurally (e.g. through a communication network). This relationship must be recited in order that all recited means are structurally connected.

Example: "agent server" and "client" in L 18-22 as recited requires that the agent server be connected to the distribution server and the client (or the client apparatus).

The applicant must review all claims to ensure that all elements in the systems are structurally connected.

16. Claim 2 recites the limitation "said delivery schedule" in line 5. There is insufficient antecedent basis for this limitation in the claim.

The examiner has assumed it to read " a delivery schedule".

17. Claim 22 recites the limitation "delivery of said goods" in line 4-5. There is insufficient antecedent basis for this limitation in the claim.

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Claim 2 refers to "agent" and "agent server" in the preamble and claim limitations, for example at L 6 the claim refers to "agent server" for managing ..by the agent. At L 14 and 17 there is reference of "the agent". Since the data communication network connects the distribution server and the agent server and not the agent, it is unclear whether the distribution server communicates to/from the agent or the agent server, thereby rendering the claim indefinite and unclear.

Similar analysis also is also applicable to claim 4.

Claim Rejections - 35 USC § 102

18. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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19. Claims 22-51 are rejected under 35 U.S.C. 102(b) as being anticipated by Martin (US Pat. 5,960,408).

Per claim 1 Martin discloses a distribution server (on-time delivery tracking and reporting computer system, col. 2 L 34-44) for managing delivery of delivery goods from a distribution center through an agent to a receiver, comprising:

Means for inputting a schedule information (customer preference database 12 , Fig. 1, step 16, customer order entry, col. 3 L 34-42);

Means for managing delivery of the delivery goods ...(Fig. 1 steps 24,26, 28 and 30);

Wherein the delivery managing means setting date and time for its delivery operation to the receiver.. outputting the delivery goods information to the agent (col. 4 L 51-60, noting that a customer service representative (agent) maintains the customer preference database);

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for

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establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

22. Claim 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin.

Per claim 2, Martin discloses delivery managing system for managing delivery of a delivery goods from a distribution center through an agent to a receiver, comprising:

A distribution server for managing delivery of the ..goods (Fig. 1 steps 24,26, 28 and 30);

An agent server for managing commission (scheduler, col. 3 L 62- col. 4 L 10);

Means ..for receiving a request for ..how to receive the delivery goods..(col. 3 L 33-42, customer order entry);

Means ..for sending the delivery goods information to the agent designated in the request.. (col. 3 L 62-10, refer to scheduler);

Means for notifying of arrival and departure of the delivery goods to and from the agent (col. 3 L 62-10, refer to scheduler);

Martin fails to teach that the functionality of managing delivery and managing commission are preformed in their respective servers connected via a communication network.

However, it is recognized that performing the recited functionalities, over a communication network over a plurality of servers (versus a single server) is within the scope of one

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of ordinary skill of art (*In re Larson* 144 USPQ 347 (CCPA 1965) and *Nerwin v. Elrichman* 168 USPQ 177 (1969)). It would have been obvious to one of ordinary skill in the art at the time of the invention to use a distribution server and an agent server having connection via a communication network as recited.

Claim 4: Martin discloses a delivery managing system for managing delivery of a delivery goods from a distribution center (the supplier) through an agent (customer service rep) to a receiver (customer) [Fig. 1 and col. 45-53] comprising:

A distribution sever for managing delivery of the delivery goods (steps 14-30 represent managing delivery goods, inherently this is done by a server operated by the supplier in view of database 12);

Means for requesting a schedule information to said client (step 16 col. 3 L 34-42);

Means for receiving said schedule information.. (step 16 col. 3 L 34-42);

Means for processing said schedule information received from the client (step 22 Fig. 1, col. 3 L 43-61);

Means for determining date and time for delivery of goods to the client ..based on the processed schedule information(step 22 Fig. 1, col. 3 L 43-61);

Means for notifying of arrival and departure of the delivery goods ..(col. 3 L 58-61).

However, it is recognized that performing the recited functionalities, over a communication network over a plurality or servers (versus a single server) is within the scope of one of ordinary skill of art (*In re Larson* 144 USPQ 347 (CCPA 1965) and *Nerwin v. Elrichman* 168 USPQ 177 (1969)). It would have been obvious to one of ordinary skill in the art at the time of the invention to use a distribution server and an agent server having connection via a communication network as recited.

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Conclusion

23. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jagdish Patel whose telephone number is (703) 308-7837. The examiner can normally be reached Monday-Thursday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin, can be reached at (703) 308-1038. The fax number for Formal or Official faxes to Technology Center 3600 is (703) 305-7687. **Draft faxes may be submitted directly to the examiner at (703) 746-5563.**

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113 or 308-1114. Address for hand delivery is 2451 Crystal Drive, Crystal Park 5,th Floor, Alexandria VA 22202.

JNP 12/10/02


VINCENT MILLIN
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